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| 10/781,710 | 02/20/2004 | Koji Sakuta | TAKIT-144-D2 | 4197 |

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| EXAMINER |
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ROBERTS, LEZAH

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| ART UNIT | PAPER NUMBER |
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1614

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| MAIL DATE | DELIVERY MODE |
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09/20/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

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|------------------------------|--------------------------------------|-------------------------------------|--|
| Office Action Summary | Application No. 10/781,710 | Applicant(s) SAKUTA, KOJI | |
| | Examiner Lezah W. Roberts | Art Unit 1614 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 26 June 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 8-58 is/are pending in the application.
- 4a) Of the above claim(s) 51 and 58 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 8-50 and 52-57 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date <u>02 Apr 2007</u> | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

This Office action is in response to the Amendment filed June 26, 2007. All previous rejections have been withdrawn unless stated below.

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims

Claim Rejections - 35 USC § 103 – Obviousness (New Rejections)

1) Claims 8-23 were rejected under 35 U.S.C. 103(a) as being unpatentable over Sakuta (EP 0 501 791) in view of Shin (US 4,937,069). The rejection is maintained.

Applicant's Arguments

Applicant argues because the compositions may disperse water without the use of surfactants that the compositions are used for aqueous compositions. The examples also show an incorporation of water. The reference does not suggest or disclose non-aqueous compositions comprising an aluminum compound. Applicant argues the rejection also asserts that Sakuta does not "stipulate the compositions cannot be incorporated in an aqueous composition". It is assumed nonaqueous composition was intended. There is also no support for the statement that the compositions may be used in non-aqueous compositions. Concerning the amounts by parts, Applicant asserts the claims specifically recite parts by weight. The rejection fails to establish how the amounts of aluminum compounds recited in claim 8 are rendered obvious by the prior

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art. In regards to Shin, the rejection fails to set forth any rationale as to why one of ordinary skill in the art would look to a disclosure to modify a composition designed for use in an aqueous composition. Shin does not disclose or suggest a composition containing a silicone polymer made from an organohydrogenpolysiloxane and either a polyoxyalkylene or an organopolysiloxane. These are major components disclosed by Sakuta. The prior art of Sakuta does not suggest the use of using the compositions in an antiperspirant. The rejection does not indicate where in the prior art such a problem is described or where the use of a silicone oil to adsorb oil will address such a problem. Shin uses a waxy material not only to adsorb volatile and nonvolatile liquid emollients but they also enhance ease of auxiliary applicability and are especially useful for improving slip. Thus the waxy material provides the adsorption feature stated in the rejection. This argument is not persuasive.

Examiner's Response

The primary reference, Sakuta, discloses organohydrogenpolysiloxane and a polyoxyalkylene and/or organopolysiloxane materials that may be used in cosmetic compositions. The material is suitable for using in aqueous compositions because of its properties of uniformly dispersing water. The instant claims are drawn to a nonaqueous material and not a nonaqueous product. The disclosed polymers do not comprise water and therefore they are non aqueous. It is not recited in the instant claims that the material is only used for nonaqueous products. Even if this was recited in the instant claims, it is an intended use and carries no weight in determining patentability because the material of the combined references are substantially the same as those of the

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instant claims. Applicant has apparently misunderstood the statement “[t]hey do not stipulate the compositions cannot be incorporated into an aqueous composition” as “they” referring to Sakuta. The term “they” refers to the instant claim. Although the reference does not specifically disclose antiperspirants, antiperspirants are cosmetic compositions. The secondary reference, Shin, is used to disclose silicone compounds and aluminum compounds are used in antiperspirants and the problems with using silicone oils in antiperspirants. The reference also discloses semi-solid sticks are sometimes too hard. Using the material for antiperspirants would solve some of the problems associated with using silicone oil as well as the hardness problem associated with semi-solid sticks because the silicones compositions are pasty. Furthermore Sakuta discloses the materials stably disperses powders and pigments therein without settlement as would otherwise be settled down in silicon oils owing to the difference in density between the silicone oil and the powder or pigment. The aluminum compound may be in powder form and therefore will be stably dispersed within the material of the reference. Even if the compositions were to be place in an aqueous product, water would be added to the product at the end of mixing the compositions as explained in Application 2, page 8 of Sakuta. Therefore the material would be nonaqueous until the water is added. In regards to the amount, the claims recite parts by weight but it is not clear what the total weight is. Therefore it cannot be determined how much is actually in the final composition especially considering the claims use comprising, which encompasses other components not recited in the claims.

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2) Claims 24-47, 50 and 52-57 were rejected under 35 U.S.C. 103(a) as being unpatentable over Sakuta (EP 0 501 791) in view of Powell et al. (US 6,060,546).

Applicant's Arguments

See Applicant's arguments above in regards to Sakuta. Applicant further argues Powell et al. do not disclose organohydrogenpolysiloxane. Nothing in the disclosure suggests using aluminum compounds and/or ascorbic acid in compositions like those disclosed by Sakuta that employ a silicone polymer made from an organohydrogenpolysiloxane and either polyoxyalkylene and/or organopolysiloxane as a major component. Powell also does not give amounts of the agents used. The compositions of the reference can also contain water. These arguments are not persuasive.

Examiner's Response

See Examiner's response in regards to Sakuta above. The reference is used to disclose components in different non-aqueous silicone based cosmetic compositions. These cosmetic compositions include deodorants and antiperspirants. The motivation to add the aluminum compounds and the ascorbic acid to the materials of the primary reference is to use ingredients used in deodorants and antiperspirants, as supported by the cited precedent (*Sinclair & Carroll Co. v. Interchemical Corp.*, *In re Linder*, and *In re Dial*). The primary reference discloses the silicone polymer provides a pasty composition that may be used in cosmetics, which deodorants and antiperspirants are, and therefore it would be obvious to use the silicone based component in a deodorants and antiperspirants, in view of the fact silicone materials are used in deodorants and

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antiperspirants. The secondary reference also mentions organohydrogenpolysiloxane may be used in cosmetic compositions. In regards to the amounts, see Examiner's response above. Although the compositions can contain water, water is not disclosed in the examples and water is not an essential ingredient.

3) Claims 8-50 and 52-57 were rejected under 35 U.S.C. 103(a) as being unpatentable over Sakuta (EP 0 501 791) in view of Kilgour et al. (US 6,262,170).

Applicant's Arguments

See Applicant arguments in regards to Sakuta. Applicant argues Kilgour et al. contain a cross-linked alkyl substituted silicone elastomer which is said to comprise a cross-linked hydrosilylation reaction product of (i) an alkenyl functional silicone compound; (ii) a silylhydride functional silicone compound; and (iii) one or more alpha,beta-ethylenically unsaturated alkenes. This argument is not persuasive.

Examiner's Response

See Examiner's response in regards to Sakuta above. Kilgour et al. is used primarily as a resource to disclose components used in different cosmetic compositions depending on the cosmetic compositions desired. These cosmetic compositions include compositions used on the skin such as creams, foundations, skin lotions and antiperspirants. The motivation to add the vitamins such as vitamin C and E and aluminum compounds to the materials or compositions of the primary reference is to use ingredients that are beneficial for using in skin care products and antiperspirants, as supported by the cited precedent. The primary reference discloses compositions such

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as face creams and foundations; therefore it would be obvious to one of ordinary skill in the art to use the components in the secondary reference in the desired amounts in the compositions of the primary reference. Furthermore these components are used in compositions comprising silicone fluids, which make them suitable for use in the silicone compositions of the primary reference. In regards to the amounts, see Examiner's response above.

Claims 8-50 and 52-57 are rejected.

Claims 51 and 58 are withdrawn.

No claims allowed.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lezah W. Roberts whose telephone number is 571-272-1071. The examiner can normally be reached on 8:30 - 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ardin H. Marschel can be reached on 571-272-0718. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Lezah Roberts
Patent Examiner
Art Unit 1614



Frederick Krass
Primary Examiner
Art Unit 1614

